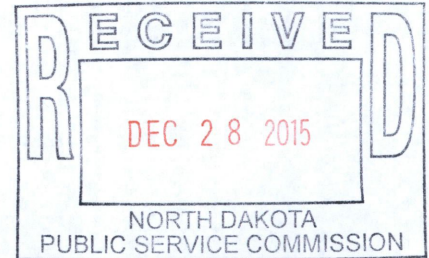


December 23, 2015

Dear Mr. Schock,

Re: Response to Tom Martin at Key Contracting.



Thank you for the opportunity to respond to Tom Martin of Key Contracting.

Along with this response we have included the locate ticket 15215058, pages from the ND One Call Handbook (pages 2-3, 6-7 and 13) and the North Dakota Century Code (49-23-04). These documents clearly state the contractor's responsibility is critical to **NOT** start their work before the "Work to Begin Date".

The fact still remains that Key Contracting provided inaccurate information to ND One Call concerning their "Work to Begin Date" for the excavation site. If Key Contracting wanted to have the "Work to begin Date" as of 12/02/2015 this should have been the communicated date to ND One Call, not the date of 12/08/2015 Key Contracting chose. Their decision to begin working early on ticket # 15215058 caught all of the underground facilities operates by surprise and placed the public at risk. Ironically I noticed the complaint from Tom at Key Contracting is dated 12/7/2015. Which also predates their requested "Work to Begin Date" on ticket 15215058.

The only relevant ticket number Tom references would be ticket number # 15215058. Key Contracting called in ticket 15215058 on 11/23/15 10:06am with a work to begin date of 12/08/15 9:45am. Key contracting damaged our facilities on 12/02/2015. A week before their stated "Work to Begin Date".

Tickets 15215020, 15215063, 15215077 and 15211981 are not part of the excavation area where damage occurred. Cable One located or cleared each of these tickets prior to the legal "Work to Begin Date" noted on each locate ticket as the law requires. We experienced no damage at these work sites.

To date we have experienced \$43,911.97 of damage due to Key Contracting starting to excavate prior to the legal "Work to Begin Date". The date of 12/08/2015 9:45am was submitted to ND One Call as the legal "Work to Begin Date" that Key Contracting had requested on ticket #15215058.

Upon arriving at the damage site on the West Side of Veterans Boulevard, just north of 40<sup>th</sup> Avenue. I witnessed Key Contracting excavating without any locate marks/flags at the damage site Tom references. Key Contracting filed a complaint specifically against Cable One, but in the same excavation area there are no less than five companies with underground facilities running North and South on the West side of Veterans Boulevard. These other facilities were also **NOT** located. Within a foot of their excavation hole there is one other fiber optic line just to the East. As well as a high pressure gas main, this service is located less than a foot to the West of our severed fiber. Neither was located and luckily both were left intact, which is fortunate considering this dig area is located in front of a school.

While I'm hopeful the damage to our facilities was purely accidental, it doesn't change the fact that Key Contracting was excavating prior to the legal "Work to Begin Date" which is clearly stated on ticket # 15215058. Please note 12/08/2015 9:45am is the date Key Contracting submitted as the "Work to Begin Date". There was some confusion from the Key Contracting on-site personal. The first ticket given to us was not for this location. Cable One found the correct ticket for this dig site thru the NTMS site.

Scott Peterson

Cable One Field Technician Supervisor



# Public Service Commission

## State of North Dakota

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### COMMISSIONERS

Julie Fedorchak  
Randy Christmann  
Brian P. Kalk

Executive Secretary  
Darrell Nitschke

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E-mail: [ndpsc@nd.gov](mailto:ndpsc@nd.gov)  
Phone: 701-328-2400  
ND Toll Free: 1-877-245-6685  
Fax: 701-328-2410  
TDD: 800-366-6888 or 711

December 11, 2015

Scott Peterson  
Cable One, Inc.  
1024 Page Dr  
Fargo, ND 58103

Re: One-Call Excavation Notice System: North Dakota Century Code Chapter 49-23

Dear Mr. Peterson:

Enclosed is a copy of a ND One-Call Complaint, against Cable One, Inc., received by the North Dakota Public Service Commission on December 9, 2015, from Thomas Martin at Key Contracting, Inc., of West Fargo, ND, Case Number PU-15-785. The location of the incident identified in the complaint is approximately the intersection of Veterans Boulevard and 40<sup>th</sup> Ave S, West Fargo, ND.

I am sending you this information so that you are aware of the Complaint and have an opportunity to present any information you may have to assist us in processing this case. **Please respond to Darrell Nitschke, Executive Secretary, North Dakota Public Service Commission, by December 28, 2015**, with your written account of the event, including the applicable One Call locate ticket number for work performed at the address indicated.

I will review your response, the ND One-Call Complaint, and other available information to determine the next step in this matter. If I conclude there was a violation of the One Call law, I may file a formal complaint with the Commission. If I decide to proceed with a formal complaint, I will attempt to contact you in advance.

Please contact me at 701-328-3397 or at [vschock@nd.gov](mailto:vschock@nd.gov) with any questions regarding this correspondence.

Sincerely,

A handwritten signature in black ink, appearing to read "V. Schock", is written over a horizontal line.

Victor Schock  
Compliance and Competitive Markets Division

Enc: ND One-Call Complaint  
c: Thomas Martin



# ND ONE-CALL COMPLAINT

Public Service Commission

SFN 59067 (1-14)

To allege a violation of the One-Call Excavation Notice System Law: North Dakota Century Code Chapter 49-23

## PART A – WHO IS SUBMITTING THIS COMPLAINT (COMPLAINANT)

Company/Person Key Contracting, Inc.	Street Address 245 7th Ave NE	City West Fargo	State and Zip Code ND 58078
Telephone and Cell Phone Number 701-238-8192	Email Address tmartin@keycontracting.com		Date 12/8/2015
<input checked="" type="checkbox"/> Complainant is willing and able to testify on the complaint if matter goes to formal hearing			

## PART B – WHO VIOLATED THE ONE-CALL REGULATIONS (RESPONDENT)

Company/Person Cable One	Street Address 1024 Page Drive	City Fargo	State and Zip Code ND 58103
Telephone and Cell Phone Number 701-461-7052	Email Address Scott.Peterson@CableOne.net		

## PART C – ALLEGED VIOLATION

<input type="checkbox"/> Operator failed to provide or update the information provided to the notification center on a timely basis
<input type="checkbox"/> Excavator failed to provide excavation or location notice at least 48 hours before beginning any excavation
<input type="checkbox"/> Excavator failed to provide required information in excavation or location notice
<input type="checkbox"/> Notification center failed to transmit the notice to every operator that has an underground facility in the area of the excavation
<input type="checkbox"/> Notification center failed to inform the excavator of the names of operators of underground facilities in the area
<input checked="" type="checkbox"/> Operator failed to locate and mark underground facility within 48 hours
<input type="checkbox"/> Excavation started prior to underground facility locate
<input type="checkbox"/> Operator failed to mark underground facility within 24 inches horizontally
<input type="checkbox"/> Excavator failed to renew excavation or location request prior to the expiration of the twenty-one-day period
<input type="checkbox"/> Excavator failed to conduct the excavation in a careful and prudent manner to avoid damage of underground facilities
<input type="checkbox"/> Excavator failed to maintain the markings during excavation
<input type="checkbox"/> Other (identify the specific section of NDCC Chapter 49-23) _____

Location of Violation:  
Veterans Blvd and 40th Avenue S, West Fargo, ND

Date and Time of Violation:  
12/2/15 at approximately 1:00 pm

Description (summarize the observations on which you rely to allege the violation) *If more space is required, please provide the description on a separate page.*

Key Contracting was replacing power poles (removing old pole, reaming existing hole and inserting new pole) on Veterans Drive, just north of 40th Ave S on 12/2/15. Key Contracting wrapped approximately 110 feet of fiber optic cable around the bit used for reaming the holes on that date. Key Contracting was working pursuant to tickets 15215020, 15215058, 15215063, 15215077 and 15211981 when replacing poles in that area. Cable One indicated that the fiber optic line removed by Key Contracting had not been located or marked as of 12/2/15. Key Contracting has worked on that power line replacement since August 2015.

## PART D – DAMAGE

Fatalities None.	Injuries None.	In-patient Hospitalization None.
Underground facility type(s) and Operator(s) affected: Fiber optic, Cable One.		
Estimated Value of Damage (damage as defined under NDCC Chapter 49-23): \$ Unknown	Number of Customers Affected Unknown	
Other impact of event: Unknown.		
Please attach photos of Event Area or Damaged Facility		

## PART I – SIGNATURE

Signature of Person Filing Complaint Thomas P. Martin	Date 12/7/15 12/7/15
--	-------------------------

Send Completed, Original Complaint To:  
Public Service Commission  
600 E Boulevard Ave Dept 408  
Bismarck ND 58505-0480  
Telephone: (701) 328-2400

**NORTH DAKOTA ONE CALL**

Ticket No:	15215058	LORQ ROUTINE	NEW TICKET
Transmit Date:	11/23/2015	Time: 10:06	Op: iatommy
Original Call Date:	11/23/2015	Time: 09:32	Op: webusr4
Work to Begin Date:	12/08/2015	Time: 09:45	

**Caller Information**

Company:	KEY CONTRACTING INC.	Fax Number:	(701) 356-0166
Contact Name:	JOE ECKLUND	Contact Phone:	(701) 238-8192 Ext:
Contact Email:	joe@keycontracting.com		
Alt. Contact Name:	MATT BAUMAN	Alt. Contact Phone:	(218) 820-5358

**Dig Site Information**

Type of Work:	SETTING POWER LINE POLES AND ANCHORS		
Work Being Done For:	MINNKOTA POWER COOPERATIVE		
Explosives:	N	Depth:	OVER 10FT Tunneling/Boring: N

**Dig Site Location**

State:	ND	County:	CASS	Place	FARGO
Address:	0	Street:	9TH STREET SE		
Nearest Intersecting Street:	40TH AVENUE SOUTH				

**Extent of Work:**

FROM THE INTERSECTION LOCATE EXISTING POWER LINE POLES AND NEW RED TOPPED STAKES ON THE WEST SIDE OF VETERANS BLVD. THE NEW POLES WILL BE IN THE SAME CORRIDOR AS THE OLD LINE. ALL WORK IS ON THE WEST OF VETERANS BLVD. AND NORTH TO 38TH AVENUE

**Remarks:**

Twp:	Rng:	Sect-Qtr:	
Twp: 139N	Rng: 49W	Sect-Qtr: 33-NW,32-NE,29-SE,28-SW,28-NW	Map Ref:
ExCoord NW Lat: 46.825883	Lon: -96.8834945	SE Lat: 46.8185064	Lon: -96.8825332

**Attachment:**

**Members Notified**

Send To:	Sequence #: 178	MapRef:		
District Code	Company Name	Marking Concerns	Damage/Repair	Customer Service
CABLE101	CABLE ONE	(218)422-6141		
CASELE01	CASS COUNTY ELECTRIC COOP	(701)356-4471		
CASWTR01	CASS RURAL WATER DISTRICT	(701)428-3139		
CTLND01	CTLQL-CENTURYLINK	(800)283-4237		
ENVTEN01	CONSOLIDATED COMMUNICATIONS	(218)568-4744		
FARGO01	CITY OF FARGO	(701)241-1545		
MIDCON39	MIDCONTINENT CABLE	(605)271-0202		
NDXCEL02	XCEL ENERGY	(866)583-7284		
WFARGO01	CITY OF WEST FARGO	(218)568-4744		

**Ticket Status / Summary**

Status for ND - CABLE101:

[Manage Attachments](#)

Is Past Work Start? Y      Is Ticket Locked? N      Is Ticket Cancelled? N

Locator Assigned:	40. Scott Jastram	▼
Status:	Not yet responded (0 - Not yet responded)	▼

## PREFACE

This manual has been prepared for the professional excavator. It is intended to be a reference tool for interacting with the North Dakota One Call notification center and it is also intended to fulfill the requirements of North Dakota Century Code 49-23. It is suggested that this manual be kept on hand for future reference when questions or problems arise. It is recommended that this manual be given to all individuals who regularly contact North Dakota One Call.

If required, additional copies can be obtained from the North Dakota One Call office. This manual has not been copyrighted by North Dakota One Call. They have authorized and recommended its duplication.

This manual was updated April 28, 2015. Its contents and North Dakota Century Code 49-23 are subject to change without notice.

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## INTRODUCTION

North Dakota Century Code 49-23 requires anyone who engages in any type of excavation, (definition 49-23-01.7. "Excavation" means any operation in which earth, rock, or other materials in or below the ground is moved or otherwise displaced by means of hand or power tools, power equipment, or explosives and includes grading, trenching, digging, ditching, drilling, augering, tunneling, boring, scraping, and cable or pipe plowing and driving.) with certain exemptions, anywhere in North Dakota to provide notice of at least 48 hours in advance (excluding weekends and holidays) to North Dakota One Call.

North Dakota One Call (NDOC) is the statewide One Call notification system established to inform all North Dakota underground facility operators of intended excavation.

### How do I use this manual?

Use this manual as a quick reference guide to questions you may have about North Dakota One Call, marking instructions, color codes, excavator responsibilities, facility operator responsibilities, or contacts at North Dakota One Call.

This manual also includes the phone numbers to North Dakota One Call if you have questions not answered in this manual. Space is provided in the back for you to add any important numbers you use on a regular basis.

It's important to note that the information contained in the front half of this handbook (pages 1 - 21) does follow the North Dakota



Century Code 49-23 but also contains recommendations for best practices in the One Call industry. For further clarification on any one subject, please refer to the North Dakota Century Code 49-23 located on pages 21 - 31.

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## HOW DO I PLACE A LOCATE REQUEST?

Two business days (but not more than 10 business days) prior to your planned excavation activity, you may place a locate request with North Dakota One Call via the following methods:

**Phone:** 811 or 800-795-0555 (both numbers are toll free)

**Online:** [www.ndonecall.com](http://www.ndonecall.com) using ITIC (Internet Ticket Processing)

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## FREQUENTLY ASKED QUESTIONS

### Do I have to call North Dakota One Call?

Yes! Calling North Dakota One Call is a state law designed to protect you, your co-workers, underground facilities and the public.

### Once I call, what happens next?

A North Dakota One Call customer service representative will ask you many important questions about where and when you will be digging. Our customer service representative will then attempt to locate your excavation site on our mapping software along with a list of possibly affected facilities. These facility operators will be notified by North Dakota One Call of your excavation plans and will then mark with paint or flags the approximate horizontal location of their underground utilities.

### If I'm a sub-contractor on a job, do I have to get a ticket or will the general contractor's ticket protect me?

North Dakota One Call requires everyone to get a ticket. If you are a sub-contractor, protect yourself and your company by calling to get a ticket. The general contractor's ticket does not apply to anyone except them.

### How soon after my start date and time do I need to complete the digging?

The law states that you have 21 calendar days after your legal start date and time to complete your excavation. If you fail to complete your digging within that period, unless previous arrangements have been made with the operator affected, your ticket is invalid. At that point you need to call North Dakota One Call again and get a new



These markings will follow the American Public Works Association color code. See color coding on inside back cover of this handbook. The markings will clearly indicate the location of the underground facility. Remember that location markings are only estimates, and the exact location can vary by the width of the facility plus 24" in either direction (the "hand-dig zone"). For example, if the markings indicate a 6" pipe is buried, the "hand-dig zone" is 54" wide (3" + 24" on each side of the mark). Always respect the "hand-dig zone". Please be aware that facility operators are required to only locate, without charge, those facilities which they own or operate. Be aware that there may be private underground facilities that have not been located.

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## GUIDELINES FOR PREPARING TO CALL NORTH DAKOTA ONE CALL

North Dakota One Call customer service representatives are professionally trained to obtain specific information concerning locate requests. The customer service representatives enter information into a computer and, therefore, the order of the questions is preset. Many excavators have questioned why the answering attendants ask so many questions. There is a definite reason for every question asked, and your cooperation is appreciated. This section will provide a brief explanation of the reason for each of the questions asked.

Locate request processing is very easy if the caller is prepared to answer all questions. **Preparation is the key.** A caller preparing the ticket format prior to calling North Dakota One Call can cut their time on the telephone with a customer service representative by over 50%! The best way to prepare to make a call is to make a copy of the ticket format found on page 11 of this manual. We suggest that you make as many copies as you need. Keep in mind that multiple excavation requests cannot be combined on one ticket.

There are alternative methods to filing locate requests, such as entering tickets remotely on the internet at [ndonecall.com](http://ndonecall.com) using ITC.

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## TYPES OF REQUESTS ACCEPTED BY NDOC

### Routine Request

This is the most common type of request processed at North Dakota One Call. **Contact North Dakota One Call at least 48 hours (excluding weekends and holidays) from the planned start of excavation.** The



ticket is valid for 21 calendar days from the start time stated on the ticket. Excavators can request a respot to refresh the marks or modify an existing ticket by calling the Center or by using ITIC on-line.

### Emergency Request

An emergency request means a sudden, unexpected occurrence, involving a clear and imminent danger, and demanding immediate action to prevent or mitigate loss of, or damage to, life, health, property, or essential public services.

#### Examples of emergencies:

- a. An unforeseen excavation necessary in order to prevent a condition that poses clear and immediate danger to life or health.
- b. An excavation required to repair a service outage.
- c. An excavation required in order to prevent significant and immediate property damage.
- d. The repair of an existing unstable condition which may result in an emergency.

Please note that work-scheduling problems are not considered an emergency.

North Dakota One Call reminds you to first call 911 whenever you believe an emergency exists. Next, contact the utility involved in the emergency, then contact North Dakota One Call. When calling in an emergency excavation request, inform the customer service representative that an emergency situation exists and be prepared to explain which of the above conditions is in effect, and be as specific as possible. Each excavator is responsible for determining if an emergency exists based on the law. The customer service representative will prepare a location request for immediate transmission and note your planned start time.

Emergency locates should be given top priority by utilities. Utilities will mark facilities within the excavation area as soon as practical, given the nature and circumstances of the emergency.

### Modify

This is used for update tickets where information on the ticket will be changing.

### Respot

This is used for update tickets where no information will change.

### Request to Meet

Most locate requests can be accurately described in a locate request. In situations where excavation projects are too large or complicated



**6. Best time to contact.**

**7. Work to Begin**

It is critical **NOT** to begin work prior to the legal start date and time. (This is a violation of the law and endangers everyone.)

Beginning work before the legal start date and time can result in the forfeiture of the excavator's rights and protections provided under the law. Legal start dates vary depending upon the type of call being placed, and therefore, depending on the circumstances of the call, North Dakota One Call customer service representatives will issue the earliest legal start date possible. Customer service representative will then ask how soon after this date and time the work is to begin. The legal start date and time will become the latter of these two dates in order to keep markings of the work site current. If the excavator postpones the excavation commencement time stated in the excavation notice by more than 48 hours or cancels the excavation, the excavator is required by law to notify the notification center.

**8a. Explosives**

Gas safety rules require gas facility owners to perform leakage surveys in the vicinity of any excavation where blasting has been performed. North Dakota One Call asks whether explosives will be used in an effort to assist gas facility operators in complying with these rules.

**8b. Tunneling\Boring**

North Dakota One Call customer service representatives will ask if the work will involve tunneling or horizontal boring.

**9. Depth**

North Dakota One Call customer service representatives will inquire as to the maximum depth of the excavation.

**10. Type of Work**

Field locators need to know the specific reason for the excavation. Customer service representatives, therefore, need to identify the specific reason for the work as compared to the work method. For example, "installation of a sanitary sewer lateral" is much more helpful than "digging for a sewer line."

**11. Work Being Done For**

The identification of who the work is being done for is another resource for obtaining additional information about the project. The customer's name or the general contractor's name is sufficient.



telecommunications companies offering local exchange service to fifty thousand or more subscribers, one member representing rural water systems, one member representing rural electric cooperatives, one member representing investor-owned electric utilities, one member representing investor-owned natural gas utilities, one member representing cable television systems, one member representing cities with a population of fewer than five thousand, one member representing cities with a population of at least five thousand, one member representing counties, one member representing underground interstate carriers of gas, one member representing interstate carriers of petroleum, one member representing interstate carriers of telecommunications services, one member representing contractors who perform excavation services, and one member representing the production sector of the American petroleum institute. The initial incorporators must represent and be designated by operators, excavators, and other persons eligible to participate in the center. The legislative members are entitled to the same compensation and expenses as provided for members of committees of the legislative management. The legislative council shall pay the compensation for the legislative members.

- b. The initial incorporators shall establish, before August 1, 1996, a board of directors of the nonprofit corporation which consists of eight members representing the participants in the center. The board shall establish a competitive bidding procedure to select a vendor to provide the notification service, establish a procedure by which members of the center share the costs of the center on a fair, reasonable, and nondiscriminatory basis, and do all other things necessary to implement the purpose of the center. Any agreement between the center and a vendor for the notification service may be modified from time to time by the board, and any agreement shall be reviewed by the board at least once every three years, with an opportunity to receive new bids, if desired, by the board. An operator may submit a bid and be selected to contract to provide the notification center service.
- c. Members of the board and any of its agents are immune from any liability of any kind based on any acts or omissions in the course of the performance of responsibilities in an official capacity except for bodily injury arising out of accidents caused by or contributed to by the negligence of the board member or agent.
- d. The board shall aid the state's attorneys of the various counties in the enforcement of this chapter and the prosecution of any violations. The board may institute a civil action for an injunction to enjoin violations of this chapter without proof that anyone suffered actual damages.
- e. The notification center must be in operation by March 1, 1998.

#### **49-23-04. Excavation.**

1. Except in an emergency, an excavator shall contact the notification center and provide an excavation or location notice at least forty-eight hours before beginning any excavation, excluding Saturdays, Sundays, and holidays, unless otherwise agreed to between the excavator and operator. If an operator determines more time is necessary for location, the operator may request a twenty-four-hour extension of the excavation or location notice by notifying the notification center. The notification center shall notify the excavator of the extension. An excavation begins the first time excavation occurs in an area that was not previously identified by the excavator in an excavation notice.

##### **The notice must contain:**

- a. The name, address, and telephone number of the person making the notification;
- b. The name, address, and telephone number of the excavator;
- c. The date and time when excavation is scheduled to begin;
- d. The depth of planned excavation;
- e. The type and extent of excavation being planned, including whether the excavation involves tunneling or horizontal boring;